

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

**Chapter VIII. Probate Matters**

**Rule 8.1 Settings, Assignments, and Continuances** (Effective 7/1/03)

**Rule 8.1.1 Order to Produce Will** (Effective 7/1/03)

A petition for an order to produce a will, together with the proposed order, must be submitted to the Probate Department for processing. (Effective 7/1/03)

**Rule 8.1.2 Probate Hearing Once Noticed Cannot Be Advanced** (Effective 7/1/03)

When a hearing on a probate matter has been noticed, or when it has been noticed and then continued to a definite date, a party cannot seek to have the matter heard before the date set by means of a new petition, an amended petition, or by a new notice. This does not preclude a party from seeking an order of the court to advance the matter under Rule 375(b) of the California Rules of Court. (Effective 7/1/03)

**Rule 8.1.3 Continuances** (Effective 7/1/03)

**Rule 8.1.3.1 Continuances of Regularly Calendared Matters** (Effective 7/1/03; rev. 1/1/06)

On the call of the calendar, matters not ready for hearing normally will be continued for at least fourteen (14) calendar days. A matter is considered not ready for hearing if notices, supplements, proofs of service, or other documentation curing all discrepancies other than strictly court determined matters are not filed prior to 11:00 a.m. at least two (2) court days before the hearing. If the matter is not ready on the second continued date, it may be ordered off calendar unless a motion for continuance is granted by the court upon the personal appearance by counsel in court. Matters ordered off calendar must be renoticed for hearing. If counsel intends to ask the court for a continuance, counsel should notify the court of this fact by 11:00 a.m. at least two (2) court days prior to the date of the calendared hearing. (Effective 7/1/03; rev. 1/1/06)

**Rule 8.1.3.2 Continuances by Stipulation of Counsel** (Effective 7/1/03; rev. 1/1/06)

Counsel cannot stipulate to a continuance of less than fourteen (14) calendar days. No continuances of contested matters which are specifically set for hearing may be made without prior court approval of the new date. (Effective 7/1/03; rev. 1/1/06)

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Rule 8.1.4     Mandatory Settlement Policy   (Effective 7/1/03)

A Mandatory Settlement Conference is required in any contested probate matter in which the estimated time of hearing is in excess of one (1) day. All Mandatory Settlement Conferences shall be conducted pursuant to California Rules of Court rule 222. (Effective 7/1/03)

**Rule 8.2     Orders**   (Effective 7/1/03)

Rule 8.2.1     Ex-Parte Orders When Property Specifically Devised   (Effective 7/1/03)

Petitions for ex-parte orders for sale of stock or personal property must allege whether or not the property is specifically devised. If so, the written consent of the specific devisee must accompany the petition. (Effective 7/1/03)

Rule 8.2.2     Material to be Included in Probate Orders   (Effective 7/1/03)

- (a)     Orders shall contain the name of the judge presiding, the date of hearing and the department. All orders or decrees in probate matters must be complete in themselves, in that they shall set forth all matters actually passed on by the court, the relief granted, the names of persons and descriptions of property involved with the same particularity required of judgments in civil matters. Probate orders should be so drawn that their general effect may be determined without reference to the petition on which they are based. (Effective 7/1/03)
- (b)     While in orders setting accounts it is proper to use general language approving the account, the report and the acts reflected therein, it is not sufficient in any order to recite merely that the petition as presented is granted. (Effective 7/1/03)

Rule 8.2.3     All Orders for Continuing Payments Must Have a Maximum Time Limit  
(Effective 7/1/03)

The court will not make orders for continuing payments to run until the further order of the court, but all such orders shall provide that payments shall commence as of a certain date and continue for a period not to exceed a specified number of months. (Effective 7/1/03)

**Rule 8.3     Appointment of Executors and Administrators**   (Effective 7/1/03)

Rule 8.3.1     Special Administration (Effective 7/1/03; rev. 1/1/06)

- (a) A petition for Special Administration of an Estate will not be accepted for

**UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN**

filing without concurrent presentation of a Petition for General Administration of the Estate, except upon good cause shown. (Effective 7/1/03; rev. 1/1/06)

- (b) A petition for special letters of administration ordinarily will not be granted without notice to the surviving spouse, the person nominated as executor, and any other person the court determines to be entitled to notice. (Adopted 1/1/06)

**Rule 8.3.2      Allegations in Petitions Re Heirs or Beneficiaries    (Effective 7/1/03)**

- (a) The nominated trustee of a trust should be listed as a devisee or legatee and the individual beneficiaries of the trust need not be listed or noticed unless the sole trustee is also the estate representative. (Effective 7/1/03)
- (b) If an heir, devisee or legatee dies after the decedent, and a personal representative has been appointed for said person, the deceased heir, devisee or legatee should be listed in care of the name and address of the personal representative. If no personal representative has been appointed, the deceased heir, devisee or legatee should be listed as deceased, the fact that no personal representative has been appointed should be alleged, and the known heirs, devisees and legatees of said deceased person should be listed, or if none are known, the last known address of the deceased person should be listed (Effective 7/1/03)

**Rule 8.3.3      Wills and Codicils as Exhibits to Petition    (Effective 7/1/03)**

When a Petition for Probate of Will or Codicil, or both, is filed, it shall have attached, marked as an exhibit, a copy of the document(s) being offered for probate. If the will or codicil is handwritten, a typewritten copy of the document must also accompany the petition. (Effective 7/1/03)

**Rule 8.3.4      Proof of Wills by Affidavit or Declaration    (Effective 7/1/03)**

- (a) When Court Appearance Required    (Effective 7/1/03)

Written proof as to the admissibility of each testamentary document must be submitted or an appearance is required. (Effective 7/1/03)

- (b) Multiple Testamentary Instruments    (Effective 7/1/03)

Each proffered instrument shall be proved by a separate affidavit or declaration. (Effective 7/1/03)

**UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN**

- (c) In all small estate proceedings when the property is being distributed pursuant to a Will and/or a Codicil, the original Will and/or Codicil shall be lodged with the Superior Court. If the Will or Codicil is not self-proving, then the Will or Codicil shall be proved as in probate proceedings. (Effective 7/1/03)

**Rule 8.3.5**      **Declinations and Consents to Serve** (Effective 7/1/03)

- (a) It is insufficient to allege merely that the person named in the decedent's will as executor thereof declines to act as such. In addition, a written declination to act, signed by such person, must be filed with the court. (Effective 7/1/03)
- (b) It is insufficient to allege merely that a non-California bank or trust company named as executor is not qualified to act as such in California since it has the right to qualify to do business in California. Instead, its declination to act should be alleged and an executed declination should be obtained and filed. (Effective 7/1/03)
- (c) If a Petition for Letters to be issued to two or more executors is filed in which one or more of the named executors for whom letters are sought is not petitioner, a consent to act, signed by each non-petitioning executor for whom letters are sought, must be filed with the court. (Effective 7/1/03)

**Rule 8.3.6**      **Multiple Representatives** (Effective 7/1/03)

When multiple representatives are appointed by an order which directs that letters (testamentary or administration) shall be issued to them, the clerk will not allow less than all to qualify and have letters issued separately. If qualification of less than all is desired, it must be so provided in the order of appointment. All qualified representatives must execute the same original letters. (Effective 7/1/03)

**Rule 8.4**      **Sales** (Effective 7/1/03)

**Rule 8.4.1**      **Published Notice for Sale of Real Estate** (Effective 7/1/03)

If Notice of Sale is published, any sale must be in accordance with its terms. If a Petition for Confirmation of Sale is filed alleging the sale took place prior to the date stated in the published notice, the sale cannot be confirmed and new Notice of Sale must be published unless the court, in its discretion permits a supplement to the petition changing the sale date to a date after the date stated in the published notice, correcting the clerical error. The court requires that the specific date of sale be alleged in the return of sale and petition for its confirmation. (Effective 7/1/03)

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Rule 8.4.2      Sale of Real Property When Buyer Assumes Encumbrance    (Effective 7/1/03)

Except under extraordinary circumstances alleged in the report of sale, sales of real estate will not ordinarily be confirmed where the buyer assumes or takes subject to an existing encumbrance if the estate is subject to a continuing liability on the encumbrance. (Effective 7/1/03)

Rule 8.4.3      Appearance of Attorney for the Estate Required    (Effective 7/1/03)

In Petitions For Confirmation of Sale of Real or Personal Property where bidding is authorized, the court will not proceed with the confirmation of the sale in the absence of the attorney of record except in those cases where the administrator, executor, guardian or conservator is in propria persona. (Effective 7/1/03)

Rule 8.4.4      Conditional Sales of Real Property    (Effective 7/1/03)

The court will not approve a sale of real property which is conditioned upon the occurrence of a subsequent event (such as change in zoning or obtaining approval from an environmental control board) unless unusual and extraordinary circumstances exist and the necessity and advantage to the estate are shown to the court. (Effective 7/1/03)

**Rule 8.5      Inventory, Accounts, Reports, and Petitions for Distribution**    (Effective 7/1/03)

Rule 8.5.1      Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)

In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of the administrator's or executor's commissions, and attorney's fees. It must also set forth the estate accounted for and the basis for the calculation. (Effective 7/1/03)

Rule 8.5.2      Description of Distributee    (Effective 7/1/03)

- (a)      The names, ages, relationships and shares of all persons who are affected by the petition must appear in the Petition for Final Distribution. Adult persons may be designated as "adult" or "legal" and for minors, the birth date shall be stated. (Effective 7/1/03)
- (b)      If a trust is established in which property will be distributed to a beneficiary upon reaching a given age, the petition must allege the date of birth of the distributee. (Effective 7/1/03)

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Rule 8.5.3 Notice to Prior Representative or Attorney (Effective 7/1/03)

If there has been a change of personal representative or fiduciary or a substitution of counsel, notice of hearing must be given to such prior representative, fiduciary or counsel of any probate petition in which fees or commissions are requested by the present personal representative, fiduciary or counsel unless: (Effective 7/1/03)

- (a) A waiver of notice executed by the prior personal representative, fiduciary or counsel is on file; (Effective 7/1/03)
- (b) An agreement on the allocation of fees and/or commissions is on file or included in the petition; or (Effective 7/1/03)
- (c) The file and the petition demonstrate that the fees and/or commissions of the prior personal representative, fiduciary or counsel have been previously provided for and allowed by the court. (Effective 7/1/03)

Rule 8.5.4 Documents to be On File Before Order for Distribution of Minor's Bequest (Effective 7/1/03)

When distribution is to be made to a minor, the petition must allege whether distribution is to be made to the court appointed guardian or to other persons under Probate Code Section 3401 or under the Uniform Transfers to Minors Act. All appropriate certified copies of court orders and Letters of Appointment or the original written assurance under Probate Code Section 3401 must be filed with the Petition for Distribution. (Effective 7/1/03)

Rule 8.5.5 Decrees of Distribution Establishing Testamentary Trusts (Effective 7/1/03)

Upon Petition for Distribution, the court must determine whether a valid trust has been created by a Will, determine the scope and terms of the trust, and order distribution of the trust property to the trustee. The terms of the trust shall be set forth in the petition and decree in such a manner as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions shall be set forth in the present tense and in the third person rather than quoting the Will verbatim. (Effective 7/1/03)

Rule 8.5.6 Receipts on Distribution (Effective 7/1/03)

Receipts for any property received by a distributee shall be signed by him or her personally. The court will not accept receipts signed by an attorney-in-fact, except where there is a power of attorney. (Effective 7/1/03)

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

**Rule 8.6      Attorney Fees and Personal Representative Commissions in Decedent's Estate** (Effective 7/1/03)

Rule 8.6.1      Amount of Fees to be Specific (Effective 7/1/03)

In all petitions requesting fees, both ordinary and extraordinary, a specific sum shall be requested, not merely "a reasonable amount". (Effective 7/1/03)

Rule 8.6.2      Basis for Statutory Fees Must Be Stated Even Though Account Waived (Effective 7/1/03)

In accounts or in Petitions for Distribution accompanied by a Waiver of Accounting, the report must state the amount of statutory fees payable and set forth the basis for the calculation. (Effective 7/1/03)

Rule 8.6.3      Format for Requesting Extraordinary Fees (Effective 7/1/03)

Application for compensation for extraordinary services will not be considered unless the caption and the prayer of the petition and the notice to affected parties contain a reference to such application for extraordinary fees. All requests for compensation for services for extraordinary fees must be itemized. (Effective 7/1/03)

**Rule 8.7      Accounts and Reports/Guardianships and Conservatorships** (Effective 7/1/03; rev. 1/1/06)

- (a)      Reports of conservators and guardians should reference the amount of the current bond and state whether additional bond is necessary to cover unblocked personal property plus one year's estimated income, and the existence of any facts that justify an additional bond. The report should also show any blocked bank accounts. The report must contain the current address and whereabouts of the conservatee and conservator, and describe the conservatee's status and condition. (Effective 7/1/03)
- (b)      All proposed conservators are required to view a court approved video regarding their duties and to file a written acknowledgement that they have done so. (Effective 7/1/03; rev. 1/1/06)

**Rule 8.8      Guardianships** (Effective 7/1/03)

Rule 8.8.1      Appointment of General Guardians (Effective 7/1/03)

Upon filing the petition for appointment of a general guardian, the petitioner shall

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

submit to the Probate Department a proposed order prescribing the notice to be given as required by Probate Code Section 1511. At least fifteen (15) days notice by personal service must be given to the parents, if not petitioning; to the minor, if twelve (12) years or older; and to the persons having custody, if not the parents. Fifteen (15) days notice by mail must be given to all second degree relatives. If petitioner is not a second degree relative, the court may require additional notice to all relatives within the degree to which the petitioner is related to the minor. (Effective 7/1/03)

Rule 8.8.2      Duties of Guardian - Liability of Parents to Support Child; Educational Purposes. Probate Code Sections 2420, 2422    (Effective 7/1/03)

Parents are required by statute to support their children. The court will not permit guardianship funds to be used for the minor's maintenance, support or education where one or both parents are living, except upon a showing of the parent's financial inability or other circumstances which would justify departing from this rule in the best interests of the minor. (Effective 7/1/03)

**Rule 8.9      Conservatorships    (Effective 7/1/03)**

Rule 8.9.1      Appointment of Conservator (Effective 7/1/03)

- (a)      A Petition for the Appointment of a Temporary Conservator will not be considered unless accompanied by a Petition for the Appointment of a General Conservator. (Effective 7/1/03)
- (b)      A Petition for the Appointment of a Conservator must be filed in quadruplicate, together with the Order Appointing Court Investigator and the Referral for Investigator's Report. (Effective 7/1/03)
- (c)      The clerk will issue the initial citation. If the citee has not been served with citation or such service is defective, a new citation must issue. If the matter is continued because the citation has not been served or service is defective, the court will order a new citation to issue and fix a new hearing date. (Effective 7/1/03)

Rule 8.9.2      Appointment of Attorneys for Conservatee    (Effective 7/1/03)  
Representation by an attorney appointed by the court in any of the above cases ceases upon an order of the court relieving said attorney as counsel. (Effective 7/1/03)



UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Rule 8.9.3      Notice of Change of Address    (Effective 7/1/03)

Conservators, guardians and personal representatives shall inform the court of any change of their address, or the address of their wards or conservatees, within thirty (30) days. Failure to comply may result in suspension or removal.  
(Effective 7/1/03)

Rule 8.9.4      Assessments    (Effective 7/1/03)

The court will order the payment of the total assessments levied for the probate investigator in any estate having sufficient funds to pay such assessments when the conservatorship is terminated by court order and in all cases where the conservatorship is terminated by death. Each account current must include payment of the assessment levied in the accounting period. No final discharge will be granted until proof of payment is filed with the court. (Effective 7/1/03)

Rule 8.9.5      Resignation of Conservator    (Effective 7/1/03)

- (a)      The conservator may resign at any time, but the resignation is not effective until the appointment of a successor conservator (termination does not require resignation). (Effective 7/1/03)
- (b)      A Petition for Resignation may not be combined with a Petition for Appointment of a Successor conservator. (Effective 7/1/03)

**Rule 8.10      Law and Motion And Discovery Matters    (Effective 7/1/03)**

Rule 8.10.1      Applicability of Kern County Uniform Rules of Court Relating to Law and Motion and Discovery in Probate Proceedings    (Effective 7/1/03)

Except where, for good cause, the court dispenses with or modifies notice:  
(Effective 7/1/03)

- (a)      Counsel shall comply with the pertinent sections of the Law and Motion and discovery rules of the Superior Court of California, County of Kern, as amended from time to time with respect to demurrers, motions to strike, judicial notice, motions for summary judgment and any other pretrial motions. Service and filing of all motions and responsive papers shall be in accord with said rules. (Effective 7/1/03)
- (b)      All preference motions under Section 36(a) of the Code of Civil Procedure must be heard and determined in the Presiding Department. When a motion for preference is granted, the attorneys shall be ordered to a

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

Mandatory Settlement Conference, unless directed otherwise by the  
Presiding Department. (Effective 7/1/03)

**Rule 8.11      Withdrawal of Attorneys of Record    (Effective 7/1/03)**

If an attorney wishes to withdraw from a proceeding as attorney of record for the estate representative or any other fiduciary he/she must file a motion seeking such relief. (Effective 7/1/03)

**Rule 8.12      Forms of Documents Presented for Filing    (Adopted 1/1/06)**

- (a) All pleadings shall comply with Rules 201 and 311 of the California Rules of Court. All documents and/or pleadings submitted in which a matter is set for hearing must specify the department number, hearing date, and time underneath the title of the document and/or pleading. (Effective 1/1/06)
- (b) All documents containing attachments, schedules, or exhibits shall be indexed and tabbed at the bottom. Each page shall have page numbers to facilitate review by the Probate Examiner's Office and the court. (Effective 1/1/06)
- (c) When printed forms are reproduced on the front and back of a single sheet, the back sheet must be inverted ("tumbled") so that it can be read when clipped at the top in a file folder. (Effective 1/1/06)

**Rule 8.13      Obtaining a Hearing Date    (Adopted 1/1/06)**

Hearing dates are obtained at the time of the submission of a petition and a notice of hearing to the Clerk of the Court. Hearing dates are not given by telephone. (Effective 1/1/06)

**Rule 8.14      Consolidation With the Lowest Number    (Adopted 1/1/06)**

Whenever it appears that two or more petitions with different numbers have been filed with reference to the same decedent, conservatee, or minor, the court will, on its own motion, consolidate all of the matters with the matter bearing the lowest number. (Effective 1/1/06)

**Rule 8.15      Petition for Confirmation of Trust Assets Pursuant to Estate of Heggstad  
(Adopted 1/1/06)**

- (a) Copies of all testamentary instruments shall be attached to the petition. (Effective 1/1/06)

UNIFORM RULES OF COURT  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN

- (b) Copies of pertinent and current documents of title to the assets in question shall be attached to the petition. Petitioner shall redact confidential information such as social security number before attaching the document to the petition. (Effective 1/1/06)
- (c) If the assets to be confirmed are not clearly declared as trust assets in the instrument, or if title was transferred to the trustee and later transferred from the trustee, all persons named in any testamentary instrument as heirs at law must be listed in the petition and given notice, in addition to the notice required by Probate Code Section 17203. (Effective 1/1/06)

**Rule 8.16     Trustee Compensation** (Adopted 1/1/06)

Compensation for the trustee will ordinarily be allowed as provided in the governing instrument, unless the court fixes a greater or lesser amount pursuant to Probate Code Section 15680(b). If the instrument is not specific, the court will establish reasonable compensation. A fee of 1% of the fair market value of the ending balance on hand will ordinarily constitute reasonable compensation, prorated if services have been rendered for less than a full year. If compensation higher than 1% of the ending market value is requested, the request must be supported by a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate. (Effective 1/1/06)

**Rule 8.17     Attorney Fees** (Adopted 1/1/06)

Compensation for attorney for the trust will ordinarily be allowed as provided in the governing instrument. If the instrument is not specific, the court will establish reasonable compensation, based on a detailed description of the services rendered, their necessity, benefit to the estate, expertise required, time expended, and hourly rate. (Effective 1/1/06)